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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

SEAN MATTHEWS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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20 pp

QUESTION PRESENTED FOR REVIEW

In this case the sufficiency issue looms most boldly as one that was not appropriately resolved in the Court below. Thus the contention is being made, although clearly we recognize that credibility determinations are properly made by jurors where, as here, the case is tried to a jury. But that is not to say a jury verdict is impervious to challenge on the grounds that the evidence was insufficient and that a miscarriage of justice arguably has occurred.

With this being so, the question presented to the court for review simply asks:

> **Should a guilty verdict be set aside where the evidence viewed in the light most favorable to the facts is clearly insufficient to convince a rational trier-of-the-fact of guilt beyond a reasonable doubt?**

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RELEVANT RULES AND STATUTES

18 U.S.C., §924	1
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18 U.S.C., §2113	1
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To The Honorable, The Chief Justice And Associate Justices Of The Supreme Court Of The United States:

The petitioner, Sean Matthews, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered herein on December 8, 1995. This Court, by an Order seasonably entered, extended the filing date until May 6, 1996. The Court Order entering this date is designated **Appendix "B", infra, p. A 5.**

OPINIONS BELOW

The Opinion of the Court of Appeals affirming this conviction is dated December 8, 1995. The Opinion is unpublished and is attached hereto as **Appendix "A", infra, p. A 1 - A 4.**

STATEMENT OF THE GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the Court of Appeals, as indicated above, was entered on December 8, 1995. The Court having extended the time for filing this Petition until May 6, 1996, jurisdiction of the Court to consider seasonably filed Petitions is properly invoked under **Title 28 U.S.C., §1257(3).**

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

1. Fifth Amendment, United States Constitution;
2. 18 U.S.C., §924;
3. 18 U.S.C., §1291;
4. 18 U.S.C., §2113;
5. 18 U.S.C., §3231;
6. Rule 28, Federal Rules of Criminal Procedure.

STATEMENT OF THE CASE

The relevant facts are easily stated. Sean Matthews was indicted herein on charges of Bank Robbery involving three banks in violation of **18 U.S.C., §2113(a)(d) and §2.** He was further indicted for the alleged crime of using and

carrying a firearm during and in relation to a crime of violence.

On appeal to the Sixth Circuit, the Court considered the single contention there made (i.e., that the evidence was insufficient to sustain a finding of guilt beyond a reasonable doubt). As the Court saw it, the convictions on counts one and two (the robbery of the Elyria Savings and Trust Bank and the weapons charge, based on the fact that a gun was used) were supported by sufficient circumstantial evidence. As to counts 3 and 5 and the related weapons charges (counts 4 and 6), the Court was convinced that there was sufficient direct evidence to support the convictions. **(Opinion, Appendix "A", infra, pp. A 1 to A 4.)**

The facts relied on by the Appellate Court for its conclusions, which are here being challenged, are easily stated. Here the Record shows the government presented its asserted proof of the various bank robberies charged in this case in chronological order. Relative to the first count, the government offered the testimony of five witnesses, two customers, two bank employees, and one police officer. Mr. James Matia, a customer, testified that he was struck on the head by one of the individuals in the bank, but he failed to identify the petitioner as being an individual in the bank on the day it was robbed. **(Tr., at pp. 26, 27.)** The other non-employee witness who testified on behalf of the government was a woman named Shirley Speaker. Ms. Speaker was at a counter filling out a deposit slip. However, she was unable to identify petitioner in Court as a participant in the robbery of the Elyria Savings and Trust Bank on June 20, 1994 **(id., at p. 68)**.

Two employees of the bank testified against the petitioner. The first, Sheila Casselle, was working behind the teller counter when she noticed two individuals enter the bank. Ms. Casselle testified as to items of clothing the

two men were wearing who robbed the bank (id., at pp. 30-33), but was not able to identify petitioner as being one of the two men who held up the bank.

The second bank employee to testify was Ms. Barb Jurco. Ms. Jurco's testimony as to events inside the bank during the robbery were inconsistent with Ms. Casselle's testimony (id., at pp. 34 and 58). The inconsistencies here being referred to distill from the following synopsis of their testimony.

First, Sheila Casselle testified on direct examination that she had previously been employed by the Elyria Savings and Trust Bank, Eastgate office, on the 20th of June, 1994. She further testified that she was working at teller station number two on that particular day. She claimed that she noticed that around 11:30 a.m., two individuals entered the bank, one with a bandanna around his mouth, and the other with a shirt pulled up above his face. (Tr. Vol. I, at pp. 28, 29.) She testified that one of the men, the individual wearing a bandanna around his face, struck one of the customers on the head, while the other individual, wearing a striped shirt, jumped over the bank counter, at her teller station, brandishing a gun (id., at pp. 30, 31). Ms. Casselle testified that the individual who had vaulted the counter did not have a bag with him at first, and was forced to obtain one from the other robber who was standing on the other side of the counter, presumably where Mr. Matia had been struck (id., p. 34). Ms. Casselle recognized that her testimony upon direct examination differed in certain respects from statements she had made to the F.B.I. agents shortly after the robbery had occurred (id., pp. 44, 45). Again, Ms. Casselle failed to identify the petitioner as an individual who was in the bank on June 20, 1994.

Ms. Casselle's version of these events can be contrasted with testimony given by Barbara Jurco. Ms.

Jurco testified she was employed as a teller at the Elyria Savings and Trust located at 565 South Abbe Road in Elyria, Ohio. It was the testimony of Ms. Jurco that she was working at the drive-up window on June 20, 1994, when she heard a thumping sound, which she later learned was a customer, Mr. Matia, falling to the floor (id., at pp. 50-51). She then said she turned and saw a man coming off the counter with a white bag and a gun in his hands. She further testified that at no time did the white bag exchange hands between the two robbers (id., p. 58). Ms. Jurco also failed to identify the petitioner as being an individual who was in the bank that was robbed on June 20, 1994.

The final witness to testify in connection with counts one and two of the indictment was Patrol Officer Earl Banks. Officer Banks was not in the bank at the time it was robbed, and he testified that his role was limited to the collection of what he described as latent footprints (id., 72-73).

Distilled, in regards to counts one and two of the indictment, the government failed to produce a single witness to the crime who was able to identify the petitioner. The government relies solely on the identification of a shirt which was described by the tellers as having been worn by one of the robbers, which was similar to one presented to the jury. With regard to counts one and two, there is no disputing the evidence was scant and weak. And, it was at the outside perimeter of admissible circumstantial evidence. No reasonable or rational individual would rely on the evidence presented to convict the petitioner on counts one and two.

The third and fourth counts of the petitioner's indictment read identical to the first and second, except for the date, place and victims. As to these charges the government produced four witnesses to the robbery of the

Dollar Bank in Brooklyn, Ohio, on June 29, 1994. *All the witnesses agreed that the individual who robbed the bank on that occasion was wearing a mask.* Some witnesses were not able to identify the petitioner at all. Certain inconsistencies were revealed at trial relative to various aspects and details as to how the robbery occurred. In our view the existence of these conflicts cast a specter of confusion over any serious effort to reconcile this evidence into proof beyond a reasonable doubt of petitioner's guilt on these counts.

The fifth and sixth counts of the indictment once again mimic the first and second counts with the exception of the date, place and victims. The third bank robbery, conducted at the Elyria Savings and Trust on Cleveland Street in Brooklyn, Ohio, occurred on July 13, 1994. Only one witness from the government was able to identify the petitioner, and did so while admitting that the robber was holding a handkerchief up over his face (**Tr. Vol. II, at 117**). Further testimony from government witnesses indicated that an individual, not physically resembling the petitioner, was the driver of a vehicle whose license plate number matched the number of a vehicle which was later involved in a high speed police chase (**Tr. Vol. II, at 132**).

Given what appears to be a horrendous sentence in this case, the fact that the sufficiency issue (the only issue raised by petitioner's previous counsel) was addressed in such a summary way by the Court of Appeals actually magnifies the gross and irreconcilable inconsistencies in the testimony of the witnesses in this case.

ARGUMENTS RELIED ON FOR ALLOWANCE OF WRIT

In this case other issues arguably could have been raised. However, being mindful that only those issues raised in the Courts below will be considered, the sole issue here deals with the sufficiency of the evidence to warrant the verdicts that were returned and the ultimate sentence

imposed.

In the argument below, which addresses that issue and the rather rote conclusion rendered by the Court of Appeals, our belief is that justice requires that this Court consider the validity of the verdicts in this case.

ARGUMENT NO. I

WHERE THE EVIDENCE, EVEN WHEN VIEWED IN THE LIGHT MOST FAVORABLE TO THE FACTS, IS CLEARLY INSUFFICIENT TO CONVINCE A RATIONAL TRIER-OF-THE-FACT OF GUILT BEYOND A REASONABLE DOUBT OF THE ACCUSED, THE VERDICT SHOULD BE SET ASIDE ON APPEAL.

The Appeals Court in this case admittedly reached the conclusion that the evidence was sufficient to support all the various convictions upon which the verdicts were based. Granted the same sufficiency arguments are at the fulcrum of those arguments made herein.

In making these arguments we are fully convinced, as was argued in the Courts below, that jury verdicts are not sacrosanct and that only by an independent review of the sufficiency of the evidence can there be any realistic assurance that due process considerations were fulfilled.

As was held in **Jackson v. Virginia, 443 U.S. 307, 319 (1979)**, the "due process clause forbids any conviction based on evidence insufficient to persuade a rational factfinder of guilt beyond a reasonable doubt."

It cannot be the subject of an intelligent debate that the accumulation of evidence, whether credible or not, can impress a jury. In the instant case, Sean Matthews was

undoubtedly convicted on all three robbery counts based on the totality of the evidence presented at trial. This seems clearly to be the case although the government lacked sufficient evidence to convict the petitioner on any count based on that count's incriminating evidence standing alone.

The Appellate Court's standard of review, for sufficiency of the evidence, admittedly was whether, viewing the evidence in the light most favorable to the government, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson, supra.** In the instant case, the evidence presented by the government was insufficient and contradictory in nature.

The upshot of the point here being made, with reference to **Jackson v. Virginia, supra,** is especially apt here. For clearly the law seems to be that although the weight to be given the evidence and to the witnesses' credibility are matters for the jury to resolve. The fact of their resolution is not dispositive of any and all sufficiency arguments. Indeed, the very existence of the rule articulated in **Jackson** "presupposes that even juries that are accurately charged on the elements of a crime and on the heavy burden of proof to which they must hold the State, nevertheless 'may occasionally convict even when it can be said that no rational trier-of-fact could find guilt beyond a reasonable doubt." **West v. Wright, 931 F.2d 262, 268 (4th Cir. 1991).** Simply put, it is a viable contention that the **Jackson** test "was adopted to provide an additional safeguard against ... [the possibility of an invalid verdict] and was to give added assurance that guilt should never be found except on a rationally supportable state of near certitude." **(Ibid.)**

Also, it is likewise clear that **Jackson** required the Court of Appeals to review all of the evidence and then

determine whether a rational trier-of-the-facts could have found guilt beyond a reasonable doubt. **Jackson, 443 U.S. at 319.** With this being so, even though the reviewing Court obviously favored the prosecution with all inferences, this does not mean the Court was required to ignore evidence that is in the record, but which it is clear the fact-finder must have ignored in reaching its conclusion. Since this seems so clearly to be so, these convictions which carry a sentence of six hundred and thirty seven (637) months, should be reviewed and reversed.

One further point that can be noted here is that as we read the Sixth Circuit's Opinion, below, the Court's focus seemed clearly not to be on "whether the trier-of-fact made the correct guilt or innocence determination ... [but, on] whether it made a rational decision to convict." **Herrera v. Collins, ___ U.S. ____, 113 S.Ct. 853, 861 (1993).**

Therefore, in view of the arguments made herein, the relief sought by this Petition should be granted.

CONCLUSION

For the foregoing reasons it is therefore respectfully requested that a writ of certiorari be issued under the seal of this Court to the United States Court of Appeals For The Sixth Circuit to the end that the judgment of that Court may be reviewed and reversed.

Respectfully submitted,

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APPENDIX

No. 95-3123

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	
	)	
v.	)	ORDER
	)	
	)	
SEAN MATTHEWS,	)	
	)	
Defendant-Appellant.	)	

BEFORE: MERRITT, Chief Judge; GUY and BATCHELDER, Circuit Judges.

Sean Matthews, represented by counsel, appeals his judgment of conviction and sentence. The parties have expressly waived oral argument, and this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

In October 1994, a jury found Matthews guilty of three counts of armed bank robbery and aiding and abetting in violation of 18 U.S.C. §§2113(a), (d) and 2, and use of a firearm during the robberies and aiding and abetting in violation of 18 U.S.C. §§924(c)(1) and 2. The district court sentenced him to a total of 637 months of imprisonment and five years of supervised release.

Matthews has filed a timely appeal, arguing that the

government presented insufficient evidence to support his convictions.

Upon review, we conclude that there was sufficient evidence to support Matthews's convictions. *Jackson v. Virginia*, 443 U.S. 307, 324 (1979).

The government presented sufficient circumstantial evidence to support Matthews's convictions for counts one and two. *United States v. Bond*, 22 F.3d 662, 666 (6th Cir. 1994); *United States v. Duranseau*, 19 F.3d 1117, 1121 (6th Cir. 1994). The record reflects that police found a t-shirt at Matthews's residence that appeared similar to one witnesses described the robber wearing during the crime. The evidence also established that police found latent footprints at the scene of the crime that matched a pair of Nike tennis shoes found at Matthews's residence. In addition, on the day of the robbery, Matthews had a rental car similar to the car described as the getaway vehicle. Finally, Matthews admitted that he had helped rob the bank.

The government also presented sufficient evidence to support Matthews's convictions for counts three and four. A teller testified that two men entered the bank with guns, and she identified Matthews as one of the robbers. Another bank employee identified Matthews as the robber who had held a gun to her head. Moreover, Matthews admitted that he had helped rob the bank. The witnesses' statements that the robbers had worn masks do not render their testimony inadmissible, but only go to the weight of their testimony which is for the jury to assess under the totality of the circumstances. *United States v. Causey*, 834 F.2d 1277, 1286-87 (6th Cir. 1987), *cert. denied*. 486 U.S. 1034 (1988). Matthews did not establish that the identification procedures were unduly suggestive, and the totality of the circumstances reflects that the witnesses' identifications were reliable. *See Neil v. Biggers*, 409 U.S.

188, 199-200 (1972).

Finally, the government presented sufficient evidence to support Matthews's convictions for counts five and six. A bank teller testified that she saw the defendant, Matthews, come toward her with a gun while holding a handkerchief over his nose and mouth. Two additional employees who had been returning from lunch noticed the robbery and called 911 to advise the dispatcher of the bank robbery and the temporary tag number of the getaway vehicle. Subsequently, law enforcement officers located the abandoned vehicle. They found two handguns, ammunition for the handguns, a white handkerchief in the shape of a triangle, and a temporary tag inside the car. A Federal Bureau of Investigation (FBI) agent noticed that the car was a rental and obtained Matthews's name and address from Budget Rent-A-Car. During a consent search of Matthews's residence, FBI agents found a pair of Nike tennis shoes, a striped t-shirt, and Budget rental agreements in the garage. Finally, after conferring with counsel, Matthews admitted that he had assisted in the robberies, that he had been armed, and that his accomplice had assaulted a customer during one of the robberies.

The bank teller's statement that the robber had covered his nose and mouth with a handkerchief does not render her testimony inadmissible, but only goes to the weight of her testimony which is for the jury to assess under the totality of the circumstances. *Causey*, 834 F.2d at 1286-87. Matthews did not establish that the identification procedures were unduly suggestive, and the totality of the circumstances reflects that the witness's identification was reliable. *See Biggers*, 409 U.S. at 199-200.

Accordingly, we affirm the judgment of conviction and sentence.

ENTERED BY ORDER OF THE COURT

/s/ Green
Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
Clerk Of The Court

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479-3011

February 26, 1996

Mr. James R. Willis
Suite 350, Courthouse Sq. Bldg
310 Lakeside Avenue, N.W.
Cleveland, OH 44113

Re: Sean Matthews
v. United States
Application No. A-702

Dear Mr. Willis:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on February 26, 1996, extended the time to and including May 6, 1996.

This letter has been sent to those designated on the attached notification list.

Pursuant to Rule 29.4, forward proof of service upon the Solicitor General.

Sincerely,

WILLIAM K. SUTER, Clerk

/s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543

WILLIAM K. SUTER
Clerk Of The Court

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479-3011

NOTIFICATION LIST

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